California Regional Water Quality Control Board
North Coast Region

RESOLUTION NO. R1-2005-0064
Adopting
Watershed-Wide Waste Discharge Requirements
for
Timber Harvesting Plan Activities
Conducted by Scotia Pacific Company, Salmon Creek Corporation,
and
The Pacific Lumber Company
in the
Elk River Watershed

Humboldt County

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. The Pacific Lumber Company, the Scotia Pacific Company LLC, and Salmon Creek Corporation, all subsidiaries of MAXXAM, Inc., (hereinafter collectively referred to as the Discharger) own and/or conduct timber harvest activities on approximately 21,000 acres (76%) of the 27,500 acre Elk River watershed, tributary to Humboldt Bay and southeast of Eureka. There are two major tributaries of the Elk River, the North, and South Forks of Elk River. The Discharger owns approximately 98% of the total watershed area within North Fork Elk River planning watersheds. In South Fork Elk River planning watersheds, the Discharger owns approximately 51% of the watershed including Railroad and Clapp Gulches.

2. The Discharger conducts timber harvesting, forestry management, road construction and maintenance, and related activities on the lands in the Elk River watershed within its ownership.

3. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of the Eureka Plain Hydrologic Unit, including the Elk River and its tributaries, are:
   a. Municipal and Domestic Supply (MUN)
   b. Agricultural Supply (AGR)
   c. Industrial Service Supply (IND)
   d. Groundwater Recharge (GWR)
   e. Freshwater Replenishment (FRSH)
   f. Navigation (NAV)
   g. Hydropower Generation (POW)
   h. Water Contact Recreation (REC-1)
   i. Non-contact Water Recreation (REC-2)
   j. Commercial and Sports Fishing (COMM)
   k. Cold Freshwater Habitat (COLD)

l. Wildlife habitat (WILD)
m. Rare, Threatened, or Endangered Species (RARE)
n. Marine Habitat (MAR)
o. Migration of Aquatic Organisms (MIGR)
p. Spawning, Reproduction, and/or Early Development (SPWN)
q. Estuarine Habitat (EST)
r. Aquaculture (AQUA)
s. Water Quality Enhancement (WQE)
t. Flood Peak Attenuation/Flood Water Storage (FLD)
u. Wetland Habitat (WET)

4. The waters of Elk River support, or before recent timber harvest-related degradation of water quality, have supported, domestic and agricultural water supplies for more than 100 residents.

5. The waters of Elk River support coho and Chinook salmon, and steelhead and cutthroat trout. Coho salmon, Chinook salmon, and steelhead trout are listed as threatened under the Federal Endangered Species Act. Additionally, the California Fish and Game Commission amended the California Endangered Species Act (CESA) to list coho salmon as threatened in the Southern Oregon / Northern California Coast Evolutionarily Significant Unit (ESU) north of San Francisco Bay, which includes Elk River.

6. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were considered as required by law during the development of those objectives. The watershed-wide Waste Discharge Requirements (hereinafter "WDRs") adopted by this Order (Attachment 1) implement the Basin Plan water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in Finding 3 above.

7. The receiving water limitations on peak flows and landslide-related sediment discharges contained in the attached WDRs are numeric interpretations of narrative objectives, including specifically two prohibitions contained in the Basin Plan's Action Plan for Logging, Construction and Associated Activities (Basin Plan section 4, page 4-32.00), and two water quality objectives contained in the related Guidelines for Implementation and Enforcement of Discharge Prohibitions Relating to Logging, Construction, and Associated Activities (Basin Plan section 3, pages 3-2.00 and 3-3.00, and section 4, page 4-29.00):

> "1. The discharge of soil, silt, bark, slash, sawdust, or other organic or earthen material from any logging, construction or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited." (Basin Plan, section 4, page 4-32.00.)
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> "2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic or earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in

the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited." (Basin Plan, section 4, page 4-32.00.)

"5. Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses (Basin plan, section 4, page 4-32.00); and

"6. The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses." (Basin Plan, section 4, page 4-32.00);

8. As required by Water Code section 13263, these WDRs are crafted to implement the Basin Plan, and in so doing, the Regional Water Board has taken into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other (including previous) waste discharges, the need to prevent nuisance, and considerations of the provisions of Water Code section 13241.

9. Water Code section 13241 governs the establishment of water quality objectives. No new water quality objectives are established by these WDRs. In an abundance of caution, and out of a desire to be responsive to all issues raised by the Discharger, downstream residents, and the community at large, the Regional Water Board has nevertheless taken the 13241 factors into consideration; including all available evidence regarding (a) past, present and probable future beneficial uses of water; (b) environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (c) water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area; (d) economic considerations (see finding number ten below), (e) the need for developing housing within the region, and (f) the need to develop and use recycled water.

10. The Regional Water Board has considered the testimony, evidence, and other available information on the economic impacts implicated by discharges of sediment, including financial burdens related to sediment discharges as borne by downstream landowners and residents and the larger community, the impairment of beneficial uses, including anadromous fisheries, and the cost of compliance with watershed-wide WDRs. As directed by statute, the attached WDRs are calculated to "attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Water Code section 13000.)

11. Based in part on due consideration of the available evidence and public policy considerations relating to findings number nine and ten above, the Regional Water Board finds that the receiving water limitations and other provisions set out in these WDRs are reasonably necessary to protect beneficial uses, to prevent nuisance, to comply with applicable prohibitions, and to achieve water quality objectives.

12. The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to take this action, and has provided them with an opportunity for a public hearing and an opportunity to submit their written and oral comments and recommendations.

13. The US Environmental Protection Agency and State Water Resources Control Board may certify that the California Forest Practice Rules are Best Management Practices for timber operations on non-federal lands, at which time timber harvest activities on private and state-owned lands will be exempt from waste discharge requirements pursuant to the Z'berg-Nejedly Forest Practice Act Section 4514.3, except as provided for in Section 4514.3(b)(1)-(3). That certification has not occurred to date.

14. Waste Discharge Requirements must implement the Basin Plan, which prohibits the discharge of sediment waste from timber harvest-related activities in amounts deleterious to beneficial uses (Basin Plan pp. 4-28 - 4-30), and must be crafted to address the need to prevent nuisance (Water Code section 13263(a)). California Water Code section 13050 defines nuisance to mean anything which meets all of the following requirements:

    (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

    (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

    (3) Occurs during, or as a result of, the treatment or disposal of waste.

    The criteria of Water Code section 13050 are met in Elk River. It is therefore the right and responsibility of the Regional Water Board to control the nuisance flooding and Elk River. Based on the extensive documentation of nuisance flooding, the relationship of increased peak flows to canopy removal, and the obligation of the Regional Water Board to address nuisance, the watershed-wide WDRs incorporate effluent limitations on peak flow increases.

    It is recognized that the Z'Berg Nejedly Forest Practices Act of 1973 (FPA) provides that timber operations conducted consistent with the FPA in a timber production zone shall not constitute a nuisance. (Gov't Code section 51115.5(a).) In this setting however, it is the increased peak flows and landslide-related deliveries of sediment from disturbed lands that create the nuisance conditions, and these discharges are what is regulated by the effluent limits in these WDRs to protect beneficial uses and prevent nuisance, as required by Porter-Cologne.

15. Sediment deliveries to Elk River have increased in response to accelerated timber harvesting plan activities, resulting in impacts to water quality conditions documented by residents and Regional Water Board staff:

a. Significant discharges of sediment and organic debris to watercourses aggraded the stream channels in some areas, significantly reducing channel capacity and, along with increased peak flows, contributed to increased flood frequencies and severity;
b. Increased flooding threatens public health and safety, including ingress and egress to homes, roads, bridges, and other structures. Flooding is a nuisance condition under the California Water Code (CWC) and must be addressed under the WDRs (CWC §§ 13050 and 13263;
c. Increased sediment and organic material can also produce tastes and odors offensive to the senses, and has increased the need for maintenance and replacement of water heaters, has plugged spray nozzles on agricultural equipment and water treatment facilities, and has interfered with surface water supply intakes; and
d. Increased turbidity due to excessive fine sediments also provides a medium to promote bacteriological growths and reduces the effectiveness of water disinfection for domestic water supplies.

Residents report to the Regional Water Board that these effects continue in nature and extent.

16. Excessive fine sediment has been shown to detrimentally affect spawning gravel for fish and to reduce survival from egg to emergence stages by reducing intragravel oxygen and gravel permeability and by entombing fish larvae within gravel interstices and can reduce the production of food organisms for juvenile fish. Furthermore, increased excessive bedload reduces stream pool size and habitat availability for aquatic species, and reduces channel capacity, which leads to increased flooding of adjacent lands and may cause dewatering in the summer time.

17. The Elk River watershed is listed as an impaired water body under Section 303(d) of the Clean Water Act due to sedimentation/siltation. Water quality problems cited under the listing include: sedimentation, threat of sedimentation, impaired irrigation water quality, impaired domestic supply water quality, impaired spawning habitat, increased rate and depth of flooding due to sediment, and property damage.

18. Since 1986, the Discharger has conducted accelerated timber harvesting plan activities throughout their entire Elk River ownership. For example, in the North Fork Elk River watershed, the average annual rate of harvest from 1986 to 1998 was 5.4% of their ownership, compared to annual average their harvest from 1974 to 1987 which was 0.5%. From 1999 through 2001 the annual average harvest rate was 0.3% while CDF imposed a moratorium on new plan approval due to cumulative watershed impacts. From 2002 to 2004, the annual average harvest rate was 4% of their ownership.

19. On December 16, 1997, representatives of CDF, California Department of Fish and Game, then California Division of Mines and Geology (now known as the California Geologic Survey), and Regional Water Board staff reached consensus that the Elk River watershed had significant adverse cumulative watershed impacts, with timber harvesting a contributing factor.

20. Conditions in this watershed, tools for recovery, and the linkages to timber harvesting plan activities and associated road construction are documented in a number of reports and scientific panel reviews:
    a. "Sediment Source Investigation Reduction Plan for the North Fork Elk River Watershed, Humboldt County, California" (PWA, 1998): "both road construction and harvesting have been linked to increased sediment production and yield in the North Fork Elk River." In addition, various landslide processes were found to constitute the largest percentage of sediment sources in this watershed, a significant portion of which is related to timber-harvest related activities.
    b. "An Analysis of Flooding in Elk River and Freshwater Creek Watershed, Humboldt County, California" (1999): A CDF-commissioned Blue Ribbon panel of University of California scientists (U.C. Panel) review (July 1, 1999) concluded, in part, that the submitted analysis was incomplete and incorrect, and that flooding was likely increased significantly by the Discharger's timber harvest and related activities. In addition, the U.C. Panel noted that there is aggradation in the North Fork Elk River, and that material is still working its way down through the channel.
    c. The North Coast Regional Water Quality Control Board "Staff Report for Proposed Regional Water Board Actions in the North Fork Elk River, Bear Creek, Freshwater Creek, Jordan Creek and Stitz Creek Watersheds" (Sept. 9, 2000): This document described and annotated the increased sediment deliveries to watercourses from harvested lands, increased flooding impacts, the accelerated rate of land-disturbing timber harvest activities, and its correlation to these impacts. The document also proposed alternative or combined courses of action for reducing these impacts, including but not limited to the issuance of WDRs.
    d. The University of California Committee on Cumulative Watershed Effects found in their June 2001 report, "A Scientific Basis for the Prediction of Cumulative Watershed Effects," that an increase in peak flow rates due to timber harvesting is likely under the current harvest rates and that this increase in peak flow translates into an increase in flood risk.
    e. The Humboldt Watersheds Independent Scientific Review Panel (ISRP) (December 27, 2002) reviewed CDF's application of the empirical peak flow model used to establish the annual timber harvesting limitation of 600 equivalent clearcut acres for the Elk River watershed. The ISRP concluded that "the approach does not take into account sediment production or changes in the sediment transport capacity of channels that might result from harvest." Further, because the CDF approach is designed to maintain the current level of impairment rather than promote recovery, this approach "yields a high risk that current harvest rates will not achieve recovery of beneficial uses of water in impaired water bodies."
    f. Regional Water Board staff's "Preliminary Assessment of Flooding in Lower Elk River" (Patenaude, 2004) concluded that: 1) channel capacity as a function of cross-sectional area decreased by at least 35% from 1965 to 2003, 2) the channel capacity as a function of streamflow capacity has decreased by 60% between 1965 and 1998, and 3) the channel capacity as a function of bankfull depth decreased by at least 20% from

1965 to 2003. Residents' reports of recent increased flooding frequency and magnitude in lower Elk River are consistent with these measured physical changes.

21. The Regional Water Board Executive Officer has issued Cleanup and Abatement Orders to address existing sediment sources and water supplies in the Elk River watershed:
    a. Order No. 98-100 (replaced Order No. No. 97-115): determine which agricultural and/or domestic water supplies are affected and abate the effects by providing alternate water supplies and restore historic, existing and potential beneficial uses.
    b. Order No. R1-2002-0114 (replaced Order No. R1-2002-0085): submit workplans and begin work on remediation of sediment delivery sites, both road and non road related, in the Elk River watershed, and assess in-stream sediment deposits, options for remediation, a treatment schedule for remediation, and implement the plan.
    c. Order No. R1-2004-0028: submit information on sediment source inventories in the South Fork and Mainstem Elk River watersheds, submit a workplan and treatment schedule for remediation, implement the plan, and monitor.

22. In March of 1999, the Discharger, the US Fish and Wildlife Service, National Marine Fisheries Service (NMFS, now called NOAA Fisheries Service or NOAA Fisheries), and the California Department of Fish & Game (DFG) (collectively referred to as the Wildlife Agencies) entered into an agreement to implement a multi-species Habitat Conservation Plan (HCP) on the Discharger's lands. The HCP was prepared to address the requirements of the Federal Endangered Species Act (FESA) and the California Fish and Game Code with regard to listed (and potentially listed) species, including listed salmonids. The Implementation Agreement for the HCP (Section 10.16, page 52) states, in part, "Notwithstanding any other provisions in this Agreement all activities undertaken pursuant to this Agreement, the HCP, or the Federal or State Permits must be in compliance with all applicable Federal and state laws and regulations…"

23. The HCP imposes certain prescriptions and other benefits that form an important and valued platform upon which these watershed-wide WDRs build. However, the HCP was not designed to, and can not, ensure full compliance with the federal and state water quality laws and regulations, such as the Basin Plan prohibition against discharge of sediment waste in amounts deleterious to beneficial uses such as domestic drinking water supplies, nor does the HCP protect against nuisance flooding or directly remediate aggradation of stream channels. Section 3.4.1.3 (page 3.4-13) of the "Final Environmental Impact Statement/Environmental Impact Report For the Headwaters Forest Acquisition and the PALCO Sustained Yield Plan and Habitat Conservation Plan" states: "Because the proposed HCP/SYP is not designed specifically to address impaired waters to meet the water quality criteria, additional restrictions and BMPs may be required later by the TMDL process. These future restrictions could conflict with some management components of the proposed HCP/SYP. Such future effects of the Clean Water Act enforcement are beyond the scope of this document and thus will not be addressed here". Additionally, the HCP requirements are calculated to result in a trend toward properly functioning watershed conditions over period of 50 years: the HCP was not designed to achieve compliance with applicable water quality standards, the legal requirements in the Basin Plan or other

applicable water quality laws in Porter-Cologne or the Clean Water Act. The Regional Water Boards, however, are required to regulate water quality in a manner that will achieve compliance with those laws.

24. Under the HCP, the Discharger implements road-related sediment reduction strategies through CDF's THP process. Particularly, the Discharger "upgrades" all appurtenant roads associated with approved THPs, and employs a "zero net discharge" sediment offset strategy. Such properly implemented efforts can be effective at reducing sediment discharges from timber harvesting plan activities over the long term. These upgrades and other "offset mitigation" activities are activities that could and sometimes are required by law to be abated as an existing obligation of the landowner under the Water Code (e.g., section 13304), raising the question of whether such reductions should be used to give credit for new discharges, and if so, to what extent. Additionally, while there are desirable long-term benefits to these activities, there are also short-term increases in discharges commonly arising from these activities that should be taken into account as well. Finally, without the inclusion of limits addressing peak flow and landslide effects on water quality, these upgrades and offsets cannot and will not by themselves result in compliance with applicable water quality standards, objectives, and prohibitions.

25. CDF, using an empirical model developed in the Caspar Creek watershed, conducted analyses in the Elk River watershed in 2002 to determine a canopy removal rate that would not result in an increase in peak flow over the then current (2001/2002) conditions. In 2002, CDF imposed, and the discharger accepted, allowable timber harvest acreage limitations in the Elk River watershed of 600 clearcut equivalent acres per year; those harvest rate limitations are still in effect. This is the same peak flow model used in the attached WDRs (the Empirical Peak Flow Reduction Model) to calculate a numeric receiving water limit. Use of this model in these WDRs has the goals of considering existing nuisance conditions and achieving recovery over a reasonable time period, in order to address cumulative impacts and nuisance conditions sufficient to meet applicable water quality standards, objectives and prohibitions, and to protect and restore damaged beneficial uses.

26. At the request and under the direction of licensed professionals on the Regional Water Board staff, scientists at the USDA Forest Service Pacific Southwest Research Station's Redwood Sciences Laboratory (RSL) in Arcata, CA prepared analyses of 1998 sediment inventory reports for Bear Creek and the North Fork Elk River. These analyses, authored by Dr. Leslie Reid, highlighted the strong relationship between recent logging and increases in landslide-delivered sediment in these watersheds. Based on these relationships and the data available in the reports, the analyses offered simple empirical models (each based on the same general approach) that could be used to determine future rates of timber harvesting that would adequately protect the beneficial uses of water from future harvest-related landslides, achieve water quality objectives, and allow for watershed recovery from cumulative impacts. Specifically, the approach identifies the rate of sediment production expected on forested acres and those expected from harvested acres.

27. In June 2002, and again in February 2003, the Regional Water Board directed that a blue-ribbon science panel, which came to be known as the Humboldt Watersheds Independent Scientific Review Panel (ISRP), be convened to provide input on key issues related to water quality protection in the Bear, Stitz, Jordan, and Freshwater creek and Elk River watersheds (the "Five Watersheds"). As part of its first phase of work, the ISRP reviewed the approach developed by Dr. Reid. The ISRP found that Reid's approach, referred to in their reports as the "empirical sediment budget approach," was superior to the other methodologies it reviewed, given the information currently available in the Five Watersheds. They stated that the empirical sediment budget's use of sediment production ratios, rather than absolute rates, alleviated much of the difficulty associated with background rate estimation by rather determining a ratio of harvested to background rates. Acknowledging criticisms to the empirical sediment budget approach (primarily that it did not consider areas that were off-limits to harvesting because of high landslide potential), the ISRP identified means of addressing those issues. In Appendix C of its first report (ISRP, 2002), the ISRP provided a detailed discussion and derivation of a refined version of Dr. Reid's initial work in which they identified how to consider the sediment production from areas with different landslide hazards.

28. Regional Water Board staff built upon the previous work by Dr. Reid and the ISRP and developed refined versions of the original model. The Empirical Harvest-Related Landslide Delivery Model (Landslide Reduction Model) was developed by staff specifically to address the ISRP recommendations by considering land class categories based on differences in silvicultural methods (clearcut vs. partial cut methods), and on landslide hazard differences using three available hazard zonation schemes. The Landslide Reduction Model considers four land classes, including combinations of two timber harvesting categories ("recently harvested" vs. "unharvested" areas) and two landslide hazard categories ("high hazard" vs. "low hazard" zones), and was used to develop receiving water limitations for the watershed-wide WDRs.

29. On October 23, 2003, the California Geological Survey (CGS) requested the Technical Advisory Committee on Forest Geology (TAC) of the State Mining and Geology Board to review a forerunner of the Landslide Reduction Model, developed by the Redwood Sciences Laboratory. CGS supplied the TAC with three documents for their review, whereas the Regional Water Board staff believed that a series of documents was necessary for a proper review, and provided the TAC with them. However, the TAC chose to focus on one document. Their limited review led the TAC to state, in a letter dated November 15, 2004, that the version of the empirical modeling approach they reviewed was not an appropriate tool. Regional Water Board staff agreed that that version of the model was not yet suitable, and followed the ISRP recommendation to further develop and refine it. The result of this further refinement resulted in the more fully developed Landslide Reduction Model.

30. In recognition of the conditions in the Elk River and Freshwater Creek watersheds and the linkage to timber harvesting plan activities, the Regional Water Board approved three motions December 3, 2003: 1) additional regulatory and non-regulatory actions are

necessary due to the rate and scale of land disturbing activities in the five impaired watersheds, including Elk River; 2) direction to develop a Cleanup and Abatement Order to address sediment sites (Order No. R1-2004-0028) and issue a Time Schedule Order if the due dates contained in the Order are not met; and 3) require the submittal of Reports of Waste Discharge which would lead to watershed-specific Waste Discharge Requirements.

31. The Discharger is currently proposing to engage in timber harvesting plan activities within its Elk River ownership which will result in additional discharges and threatened discharges of sediment to the Elk River and its tributaries, causing further impairment of the beneficial uses of those waters than what has already occurred as a result of timber harvesting and related activities, as set out above, and extensively documented in the record.

32. The Board adopted "General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region" (Order No. R1-2004-0030) (GWDRs) on June 23, 2004. Against the backdrop of the findings described above, the Board included a provision in the GWDRs that provides that the Executive Officer "shall rescind or deny the applicability of these General WDRs" where, among other things, "conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, the extent of timber harvest activities, intensity of ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation."

33. The Regional Water Board adopted the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Order R1-2004-0016) (Categorical Waiver) on June 23, 2004. That Order contains the same language as the GWDR (finding 22) regarding rescission or denial of a waiver.

34. The Regional Water Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is in the public interest (CWC section 13260-13269). The Regional Water Board must craft WDRs to implement the Basin Plan, (CWC § 13263(a)) and to be consistent with policies governing water quality adopted by the State Water Resources Control Board, including the Plan for California's Nonpoint Source Pollution Control Program and Five-Year Implementation Plan (December, 2003). The proposed WDRs are consistent with both the Basin Plan and the State Water Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (May 2004).

35. On June 17, 2004, the Executive Officer required submission of a Report of Waste Discharge (ROWD) for the Elk River watershed from the Discharger by July 16, 2004. The Discharger submitted a ROWD on October 6, 2004. Following the submission by the Discharger of the information required in the request for ROWD, the staff determined the

ROWD to be complete on January 25, 2005, when the Discharger submitted signed, stamped final versions of most of the materials. Staff review of the data revealed numerous questions regarding accuracy and completeness. Over the ensuing six months, staff continued to work with the Discharger to resolve questions surrounding data completeness and accuracy, in a collaborative manner, yielding the current, more refined data sets upon which the attached WDRs are based.

36. Regional Water Board staff have developed a framework for the WDRs that address cumulative watershed effects by continuing compliance with the CAOs, through numeric receiving water limitations for peak flow (nuisance reduction) and sediment yield from timber harvest related landslides, and other terms set out in the attached WDRs.

37. This watershed-wide WDR Order (Attachment 1) is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." This Order will result in the reduction in the discharge of waste, not an increase.

38. The Discharger's proposed timber harvest plan activities are not eligible for coverage under the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Categorical Waiver) (Order R1-2004-0016), nor the General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (GWDR) (Order R1-2004-0030), adopted by the Regional Water Board on June 23, 2004.

39. Prescription of waste discharge requirements for the Discharger's timber harvesting plan activities in the Elk River watershed are appropriate given the history, current condition of the watershed and its streams, the inapplicability of the GWDR and Categorical Waiver Orders, and as required by the California Water Code.

40. Timber harvesting plan activities covered under these Waste Discharge Requirements must, as a precondition, have achieved compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code §§ 21000 et seq.) through the Timber Harvest Plan (THP) approval process at the CDF. In issuing THPs, CDF acts as "lead agency," using a certified "functional equivalency" process, producing the equivalent to an Environmental Impact Report.

41. The Regional Water Board does not grant timber harvest permits, but reviews these permitted activities and their attendant environmental documents to determine and require compliance with the Basin Plan and the Porter-Cologne Water Quality Control Act. In that process, the Regional Water Board acts as a responsible agency under CEQA, relying on the environmental review documents prepared by CDF. CEQA specifically provides that in so doing, the environmental documents prepared by the lead agency are to be conclusively presumed adequate, with limited specified exceptions, and must be relied upon by the responsible agency in complying with CEQA. (Pub. Resources Code, section

21167.2; Title 14, California Code of Regulations, section 15231.) In acting as a responsible agency reviewing these permitted operations, the Regional Water Board exercises its authority to require any additional regulatory restrictions that may be necessary to go beyond mere avoidance of "significant adverse environmental impacts," to require whatever is necessary to comply with the requirements of the Basin Plan and Porter-Cologne Water Quality Control Act.

42. These WDRs are the mechanism by which the Regional Water Board will assure the maintenance, restoration, or enhancement of water quality, in compliance with the Basin Plan and other applicable water quality laws, in the performance of the Board's responsible agency role under CEQA. Consistent with the CEQA Guidelines' Class 7 Exemption, these watershed-wide WDRs are an action taken by a regulatory agency "to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (14 CCR § 15307.) Similarly, consistent with Class 8, these watershed-wide WDRs are an action taken by a regulatory agency "to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." (14 CCR § 15308.)

43. Despite the eligibility for these exemptions, out of an abundance of caution, and knowing the controversial nature of timber harvest activities and all regulatory actions relating thereto, the Regional Water Board, acting as the lead agency for this "project" under CEQA, has conducted an Initial Study in accordance with Title 14, CCR Section 15063. (The "project" for CEQA purposes is the adoption of attached watershed-wide WDRs).

44. The Regional Water Board staff has prepared a proposed Negative Declaration, a copy of which is attached hereto, in accordance with CEQA and the CEQA Guidelines (Title 14, CCR Section 15000 et seq.). The Negative Declaration concludes that the adoption of these watershed-wide WDRs will not have a significant impact on the environment, individually or cumulatively.

45. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA.

46. The Regional Water Board conducted public hearings on September 14, 2005 in Fortuna, California and on September 27 or 30, 2005 in Santa Rosa, California, and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and this Order.

47. The proposed Negative Declaration is fully supported by the record and the law. There is no evidence in the record to support a fair argument that these watershed-wide WDRs will result in significant environmental effects.

48. The Regional Water Board, in accordance with CEQA and State Guidelines, determines that there will be no significant adverse environmental impacts, individually, or

cumulatively from this Order, provided that there is compliance with its terms and provisions.

49. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the proposed discharge and Order relating thereto.

THEREFORE, the Regional Water Board hereby approves and adopts the Initial Study and Negative Declaration prepared for the issuance of watershed-wide WDRs, and directs the Executive Officer to file all appropriate notices; and

IT IS HEREBY ORDERED that the Discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the watershed-wide Waste Discharge Requirements for the Elk River watershed as set forth in Attachment 1 to this Resolution, incorporated herein by reference.

CERTIFICATION

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on September 27, 2005.

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Catherine Kuhlman
Executive Officer